

PETITION FOR APPROVAL OF IMPACT FEES

§293.171. Definitions of Terms.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Impact fee - Impact fee means a charge or assessment imposed by a district against new development in order to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to such new development. A charge or fee by a district for construction, installation, or inspection of a tap or connection to district's water, wastewater, or drainage facilities, including all necessary service lines and meters, that:

(A) does not exceed three times the actual and reasonable costs to the district for such work or

(B) if made to a nontaxable entity, does not exceed the actual costs to the district for such work and for all facilities that are necessary to provide district services to such entity and that are financed or are to be financed in whole or in part by tax-supported bonds of the district, shall not be deemed or considered to be an impact fee.

Capital improvement plan - Capital improvement plan means a plan which identifies capital improvements or facility expansions pursuant to which impact fees may be assessed.

Capital improvements - Capital improvements means water supply, treatment, and distribution facilities, wastewater collection and treatment facilities, stormwater, and drainage, and flood control facilities, including facility expansions, whether or not located within the service area, with a life expectancy of three or more years, owned and operated by or on behalf of a district with authorization to finance and construct such facilities, but such term does not include materials and devices for making connections to or measuring services provided by such facilities to district customers.

Connection - Connection means a standardized measure of consumption, use, generation, or discharge attributable to an individual unit of development calculated in accordance with generally accepted engineering or planning standards. Connections shall be described in terms of single family equivalent connections, living unit equivalents, or other generally accepted unit typically attributable to a single family household. The assumed population equivalent per service unit shall be indicated.

Service area - Service area means an area within or without the boundaries of a district to be served by the capital improvements specified in the capital improvements plan. The service area may include all or part of the land within a district or land outside a district served by the facilities identified in the capital improvements plan.

§293.172. Information Required to Accompany Applications for Approval of Impact Fees.

Pursuant to the Local Government Code, §395.080, a district proposing to assess impact fees shall submit to the executive director an application for review. Upon submission of an application for review, the executive director has the responsibility for reviewing and the commission has the responsibility for approving or denying impact fee requests by all districts created pursuant to Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution. Each application submitted shall contain the following:

(1) A \$100 filing fee.

(2) A certified board resolution requesting approval of the impact fee and stating the amount of the proposed fee.

(3) A capital improvements plan report prepared, signed and sealed by a professional engineer registered to practice in the State of Texas and which identifies the proposed capital improvements for which impact fees will be assessed and which shall specifically include the following:

(A) An accounting of the capacity of the existing facilities, the level of current usage, the outstanding capacity commitments, and any unallocated excess capacity. This information should be presented in terms of flows and in terms of connections.

(B) An established land use plan including both the number of connections and the method used in determining the number of connections associated with each category of development.

(C) A map of the service area (on sheets not larger than 24 inches by 36 inches) which clearly:

(i) indicates the properties against which the impact fees shall be assessed;

(ii) identifies proposed land uses;

(iii) identifies existing facilities servicing the area including line sizes and approximate peak daily flow capacities; and

(iv) identifies proposed facilities necessary to serve the area including line sizes and approximate peak daily flow capacities.

(4) The projected number of connections attributable to the new development may not be based on a development period exceeding ten years.

(5) A table establishing the additional demand required by the new connections, including the level of consumption represented by a connection for each category of capital

improvements. Justification must be provided if the consumption levels differ from the minimum design criteria established by the commission.

(6) A description of the facilities intended to be financed through impact fees and a detailed analysis of all costs required to finance those improvements.

(7) A detailed calculation of the impact fee amount, including a complete explanation of all assumptions used in the calculation. All terms used should be defined.

(8) Any other information as the executive director may require.

Adopted September 30, 1996

October 22, 1996

§293.173. Impact Fee Notice Actions and Requirements.

(a) The chief clerk shall set the petition for hearing, and issue notice thereof.

(b) The notice of the hearing must be published by the district once in a newspaper with general circulation in each county in which the district intends to levy an impact fee. The notice shall be of sufficient size to be easily legible and appear at least 30 days before the scheduled date of the hearing. An affidavit verifying publication of the notice must be filed with the chief clerk prior to the date of the hearing.

(c) The notice shall:

(1) state the time, date and location of the hearing;

(2) contain a statement of the purpose of the hearing;

(3) include an easily understandable map showing the location of the district in relation to roads and other major landmarks and designating the areas upon which impact fees will be imposed;

(4) state the amount of the impact fee;

(5) inform all persons of their right to appear and present evidence for or against the impact fee or to propose higher or lower impact fees; and

(6) state that the impact fee application and supporting information are available for inspection and copying in the commission's offices during regular business hours and that the capital improvements plan is available for inspection and copying at the district's office during regular business hours.

(d) The district shall send, not later than the 30th day before the date of the hearing, notice of the hearing to each owner of property within the service area, as of the date of submitting the application to the executive director, unless good cause is shown why such notice should not be given. Property ownership shall be as reflected by the county tax rolls or the records of the appraisal district

for the county, whichever is more current. The district shall file an affidavit certifying compliance with the requirements of this subsection to the chief clerk at least one week prior to the commission hearing. Ownership of the property shall be certified by the county tax assessor/collector from the county tax rolls or by the appraisal district for the county, as applicable, as of the date of submitting of the application to the commission.

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§293.174. Commission Actions Following the Impact Fee Hearing.

(a) If the commission finds that the impact fee is reasonable, equitable and necessary as a mechanism to finance improvements to serve the designated service area, the commission shall approve the capital improvements plan and impact fee. The commission may approve an impact fee amount that is different than the impact fee amount requested in the application for commission approval; however, in no event shall the commission approve an impact fee amount higher than the impact fee amount contained in the notice required under Section 293.173(b).

(b) The commission shall issue an order defining the impact fee to be imposed based on evidence presented at the hearing.

§293.175. Material Changes.

A district's capital improvements plan may be amended from time to time as development needs of the district change; provided, however, that to the extent that such amendments constitute a revision of the impact fee structures, commission approval of the amended plan and impact fee shall be required. A property owner affected by an impact fee may petition the commission to review its authorization of impact fees if there is a substantial amendment to or change in the conditions described in the capital improvements plan subsequent to the commission's approval. The burden of proof will be on the landowner to show that there has been a substantial change which would materially change the amount or applicability of the impact fee. If the executive director is satisfied that the landowner has presented a prima facie case, the district will be required to submit information and/or materials in rebuttal.

§293.176. Prior Approval of Overlapping Impact Fees.

If a district is required to collect an impact fee for another political subdivision which has complied with the procedures set out in V.T.C.A. Local Government Code, Chapter 395, then the district is not required to seek further approval from the commission of the same fee. A test for applying this section shall be that the district does not retain any portion of said impact fee for its own use, but that it passes all such fees through to the political subdivision which has adopted said impact fee.